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FILED
DISTRICT COURT OF GUAM

JUN - 8 2005

MARY L.M. MORAN
CLERK OF COURT

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DISTRICT COURT OF GUAM
TERRITORY OF GUAM

KING TAT PHILIP NG,

Criminal Case No. 98-00037

Defendant-Petitioner,

Civil Case No. 05-00016

vs.

UNITED STATES OF AMERICA,

ORDER

Plaintiff-Respondent.

This matter comes before the Court on Petitioner's motion under FED. R. CIV. P. 60(b)(6).¹ Upon review of the pleading, the Court notes that the petitioner is attempting to collaterally attack his sentence of imprisonment imposed by Judge John S. Unpingco on June 19, 1998, citing the case of *Blakely v. Washington*, 124 S. Ct. 2531 (2004) as a basis. The Court will "liberally construe" petitioner's filing based on review of the law cited, types of relief requested and the plain language contained therein. In review of the relevant sections of FED. R. CIV. P. 60(b)(6), the Court finds that the petitioner's motion is not properly brought since motion's pursuant to this section can only be brought as a result of a judgment rendered in a civil case. The Petitioner is appealing a judgment in a criminal action. As such, said rule does not supply plaintiff with a valid form of post-conviction relief. Accordingly the pleading shall be construed and ruled upon pursuant to the applicable case law controlling the relief sought under 28 U.S.C. § 2255.

¹ The motion is entitled "Motion for Relief from Judgment Pursuant to FED. R. CV. P. Rule 60(b)(6)." See Docket No. 35.

1 As such, this is Petitioner's second motion for § 2255 relief,² yet Petitioner has not received
2 certification from the Ninth Circuit to file a second motion. Therefore, this Court lacks jurisdiction to
3 consider the present motion per 28 U.S.C. § 2255. Petitioner is advised to seek authorization from the Ninth
4 Circuit to file a second motion pursuant to § 2255.

5 IT IS THEREBY ORDERED that Petitioner's motion for relief pursuant to 28 U.S.C. § 2255 is
6 DISMISSED.

7 SO ORDERED this 8 day of June, 2005.

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11 RICARDO S. MARTINEZ*
12 United States District Judge

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16 Notice is hereby given that this document was
17 entered on the docket on 6-8-05.
18 No separate notice of entry on the docket will
19 be issued by this Court.

20 Mary L. M. Moran
21 Clerk, District Court of Guam

22 By: Marylyn B. Alcan 6-8-05
23 Deputy Clerk Date

24
25 ² Plaintiff's first petition under § 2255 was filed on January 16, 2001 and was subsequently denied in two
26 separate orders on January 11, 2002 and on April 3, 2002. A subsequent request to the Ninth Circuit, by Petitioner to
27 appeal that decision was denied on November 27, 2002. See Docket Nos. 25, 29, 31 and 34, respectively.

* The Honorable Ricardo S. Martinez, United States District Judge for Western Washington, by designation.